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PETITION NOT PRINTED

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1960

## No. 184

THOMAS E. YOUNG, PETITIONER,

*vs.*

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 1, 1960
CERTIORARI GRANTED JUNE 27, 1960

# Supreme Court of the United States

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*vs.*

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[fol. 1] (File Endorsement Omitted)

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA NORTHEASTERN DIVISION**

— 8048

Charge: Violation of Section 2115 Title 18 U. S. C.

UNITED STATES OF AMERICA

-VS-

THOMAS EDWARD YOUNG AND MARGARET RITA YOUNG

INFORMATION—Filed Oct. 31, 1951

THE UNITED STATES ATTORNEY CHARGES:

COUNT ONE

On or about the 5th day of May, 1951, one Thomas Edward Young and one Margaret Rita Young forcibly broke into the United States Post Office at Milton, in the District of North Dakota, with intent to commit larceny in said Post Office.

COUNT TWO

On or about the 5th day of May, 1951, the above-named defendants Thomas Edward Young and Margaret Rita Young forcibly broke into the United States Post Office at Munich, in the District of North Dakota, with intent to commit larceny in said Post Office.

P. W. LANIER
United States Attorney

by /s/ Harry Lashkowitz
Assistant United States Attorney

MB#12,689

[fol. 2] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORHEASTERN DIVISION

Charge: Violation of Title 18 USC Sec. 2312

UNITED STATES OF AMERICA

-vs-

THOMAS EDWARD YOUNG

AMENDED INFORMATION—Filed Nov. 30, 1951

THE UNITED STATES ATTORNEY CHARGES:

That on or about the 31st day of May, 1951, one THOMAS EDWARD YOUNG transported a motor vehicle from Milton, in the District of North Dakota, to Moorhead, in the District of Minnesota, and he then and there knew that said motor vehicle had been stolen.

P. W. LANIER
United States Attorney

By /s/ Harry Lashkowitz
Assistant United States Attorney

MB#12,763

[fol. 3] IN THE
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NORTH DAKOTA
SOUTHEASERN DIVISION

8136

Charge: Violations of Sections 2312 and 751 of Title 18 U.S.C.

UNITED STATES OF AMERICA

-vs-

THOMAS EDWARD YOUNG AND MARGARET RITA YOUNG

INDICTMENT—Filed Sep. 27, 1952

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 28th day of December, 1951, the above-named defendants, THOMAS EDWARD YOUNG and MARGARET RITA YOUNG, transported a stolen motor vehicle, to wit: a 1942 Mercury automobile, from Fargo, in the District of North Dakota, to the vicinity of Britton, in the District of South Dakota; and they then knew said motor vehicle had been stolen.

COUNT TWO

On or about the 28th day of December, 1951, the above-named defendant, THOMAS EDWARD YOUNG, was confined in the Cass County Jail at Fargo, North Dakota, as a federal prisoner, charged with the commission of felonies, in the custody of the United States Marshal for the District of North Dakota and the Keeper of the Cass County Jail, under and by virtue of an order issued by Honorable Charles J. Vogel, Judge of the United States District Court for the District of North Dakota, to wit: a commitment, dated October 31, 1951, and he, the said defendant, on or about said 28th day of December, 1951, escaped from said custody and said Cass County Jail.

COUNT THREE

On or about the 28th day of December, 1951, the above-named defendant, MARGARET RITA YOUNG, was confined in the Cass County Jail at Fargo, North Dakota, as a federal prisoner, charged with the commission of felonies, in the custody of the United States Marshal for the District of North Dakota and the Keeper of the Cass County Jail, under and by virtue of an order issued by Honorable Charles J. Vogel, Judge of the United States District Court for the District of North Dakota, to wit: a commitment, dated October 31, 1951, and she, the said defendant, on or about said 28th day of December, 1951, escaped from said custody and said Cass County Jail.

A TRUE BILL

/s/ Roy Gorshire
Foreman

/s/ P. W. Lanier
United States Attorney.

MB#13,552

[fol. 4] IN THE
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION
SOUTHEASTERN DIVISION

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Criminal Nos. 8136, 8048 and 8052

UNITED STATES OF AMERICA, PLAINTIFF

-VS-

THOMAS EDWARD YOUNG and MARGARET RITA YOUNG,
DEFENDANTS

TRANSCRIPT OF PROCEEDINGS—October 31, 1952

The above entitled defendants appeared for arraignment and sentencing before the Honorable CHARLES J. VOGEL, United States District Judge, at the court room of the United States District Court in the City of Fargo, State and District of North Dakota, on the 31st day of October, 1952.

The plaintiff was represented by Mr. Harry Lashkowitz, Assistant United States Attorney, of Fargo, North Dakota.

The defendants were represented by Mr. Donald H. Crothers, of Fargo, North Dakota.

Whereupon, the following proceedings were had and entered of record, to-wit:

MR. LASHKOWITZ: Your Honor, at this time the Government moves the arraignment of the defendants Thomas [fol. 5] Edward Young and Margaret Rita Young. They are represented by Mr. Crothers.

(The defendants and their counsel come forward and face the Court.)

THE COURT: You represent the defendants, is that right?

MR. CROTHERS: Yes, your Honor.

THE COURT: Very well, you may proceed, Mr. Lashkowitz.

MR. LASHKOWITZ: Do you wish me to read the indictment?

MR. CROTHERS: No, we will waive the reading of the indictment.

THE COURT: Are the defendants ready to enter their pleas at this time, Mr. Crothers?

MR. CROTHER: Yes, sir, they are.

THE COURT: Mr. Young, what is your plea to the indictment in 8136 containing three counts?

THE DEFENDANT MR. YOUNG: I plead guilty.

• • • •

[fol. 6] • • • •

THE COURT: You are quite correct. I referred to three counts. Mr. Young, with that explanation, you are charged in Count 1 with having violated the Dyer Act and in Count 2 with the jail break. There is not a third count so far as you are concerned. What is your plea as to that case?

THE DEFENDANT MR. YOUNG: I plead guilty, your Honor.

THE COURT: Mrs. Young, you are charged in Count 1 with violation of the Dyer Act and in Count 3 with the jail break. What is your plea as to that?

THE DEFENDANT MRS. YOUNG: Guilty, your Honor.

THE COURT: A plea of guilty is received.

MR. LASHKOWITZ: Your Honor, now that these defendants have pleaded guilty to the last indictment, we ask that sentence be imposed upon them under this indictment and also that sentence be imposed in the cases against them numbered respectively 8048 and 8052. 8048 involves the breaking into of the two post offices at Milton and Munich, North Dakota, to which they pleaded guilty on the 31st day of October last year, and 8052 just involves the defendant Thomas Edward Young, who pleaded guilty to a motor vehicle theft act case on the 30th day of November, 1951.

THE COURT: Do you have any statement for the Court and any recommendations with reference to these cases, Mr. Lashkowitz?

[fol. 7] MR. LASHKOWITZ: Your Honor, with reference to the defendant Thomas Young, he is 34 years old. He was born in Colfax, Iowa, on the 22nd day of April, 1918. When he was 12 years old, he made his first appearance in the criminal courts and that was in the state of his nativity. He was sentenced to the State Training School for Boys at Eldora, Iowa, at that time, and at that time it was the opinion of the authorities that he was incorrigible. In October, 1936, he was sentenced to one year and five months for breaking and entering. At that time he was 18 years old. In March of 1938, that is just hardly two years afterwards, he was arrested for larceny. That was also a breaking and entering at nighttime. It was there, I believe, that he broke jail for the first time and arrested just a couple of months afterwards in the State of Nebraska, and so he was again placed in the reformatory. That reformatory was the State Reformatory in Iowa. Just a few months after he was released, he was turned over to the Federal authorities; that was in 1939 and was for the larceny of an automobile in interstate commerce. He was given five years' probation on that charge. Evidently the Court at that time felt that by reason of his youth he should be given an opportunity to rehabilitate himself and reestablish himself in society, but he wasn't out very long.

In fact, it was just about nine months later when he was arrested by the Sheriff at Jefferson, Iowa for breaking and entering or burglary again. At that time, he was [fol. 8] only 21 years old, and so they sentenced him to ten years. He only served five years of it and by reason of his youth he was in a reformatory for that offense and was turned back to society in 1945. At that time he was 26 years old.

He was out just about five months when he was arrested in Des Moines, Iowa, on two charges of breaking and entering, another burglary, and he was given ten years. The sentences were to run concurrently, evidently, on those two charges. He was in the State Prison at Fort Madison, Iowa, until July, I think, of 1950, when he was again turned back on society. Seven months later, he was arrested in Sioux City, Iowa, for another burglary. He

was released on bond and he jumped his bail. They located him at Burlington, Iowa, and he was held that time for post office burglaries, and while in jail there at Sioux City he escaped. That was his second jail break.

In October of 1951 he was arrested by the Sheriff at Billings, Montana and turned over to our Marshal here for the two post office burglaries to which he pleaded guilty in October of 1951. While he was in jail here awaiting to be sentenced, he broke out with his wife and another felon and was arrested in Idaho about two or three weeks ago.

I should tell you, your Honor, that Young has consistently been heavily armed and was listed by the Federal Bureau of Investigation as one of the ten most wanted men. There isn't any question but that both the defend- [fol. 9] ants are professional burglars. If crime is a disease, they are suffering of a peculiar dementia which is breaking in and burglarizing places.

Now, as you look at these two defendants, they look intelligent, well-appearing, mentally alert, and yet they just cannot resist the commission of the crime of burglary. They are habitual criminals.

After they left here, your Honor, after their escape here from the Cass County Jail, they were in Nebraska and South Dakota and in Utah, Colorado, Kansas. They are wanted for four post office robberies. I think we have an indictment from that jurisdiction charging them with, I think, 9 or 12; it is immaterial here for our purposes, only to apprise the Court of what they have done. I tell you that the number of counts is either 9 or 12. Also in Kansas they burglarized a state bank at Santana, obtained a lot of cash there, about $5,000.00 in cash and about $1800.00 in travelers checks. They are wanted in South Dakota for three post office robberies, one at Tolstoy, another at Onaka, and a third at Herrick. They are wanted in Nebraska for three post office robberies which they committed in June of 1951. In Idaho, they broke into several mercantile establishments.

I would like to tell you just what was found on them at the time of their arrest in Idaho. I am not going to give you an itemized statement of it. I am obliged to

bulk it. They found cash in the sum of $404.00. They found numerous travelers checks, War Savings Bonds in [fol. 10] the amount of $2,025.00, which they had pilfered, more Savings Stamps in the sum of $16.00. They found several shotguns, rifles, about seven of them. There was a radio and holsters and knives, binoculars, a typewriter, watches, a camera, ammunition and tools, burglary toold.

It is our recommendation, your Honor, that both of these defendants be given the maximum penalty under the law. In the case against Young, that means 25 years. In the case against Mrs. Young, it means 20 years. They are a danger to society. Society is entitled to that protection. They have had all the opportunities of living as law abiding citizens. They are able people, your Honor. They could use their lives to better advantages, but they just won't do it, and no sooner are they released than they pursue their criminal careers and so our recommendation is the maximum penalty.

Your Honor, I think it is the first time that I have asked any court to impose the maximum penalty on defendants. I think justice would be best served and I hope your Honor sees fit to follow the Government's recommendation.

THE COURT: Mr. Lashkowitz, so far as you know, did the defendants ever attempt to use the guns at any time during any of their arrests?

MR. LASHKOWITZ: I don't have that information, your Honor, but I do recall that they overpowered the jailer in Sioux City, Iowa.

THE COURT: And the escape here was by stealth, is that [fol. 11] right?

MR. LASHKOWITZ: That was by stealth and it was at nighttime and my recollection is that the turnkey was sleeping at that time.

THE COURT: Mr. Crothers?

MR. CROTHERS: Well, your Honor, there is no question, as you have heard, of the defendants' guilt and Mr. Lashkowitz has presented what I feel is a very fair and impartial listing of the experiences and past happenings of the defendants' lives, so I won't bore the Court with facts that are already known to you. However, there are

a few matters that I would like to point out to you, one of which is that to the best of my knowledge from what I have learned, at no time was armed violence ever brought into any of their activities.

I think he is a man that has a considerable amount of experience with the law. That is unquestioned; but I think he specifically tried to refrain and has refrained from that type of living as opposed to mere robbery, and if there be a degree, I feel that that degree is present in the instant case. As I have learned from the defendant Thomas Young, in overpowering the guard at Sioux City there was no question about it, he did overpower him, but he was in no way injured and the guard was more afraid than anything else. Also here, it was Mr. Click, as I understand it, that effectuated the opening of the various doors and so forth that enabled the defendants to make their escape.

[fol. 12] I do feel that this is not a case nearly as serious as defendants that would have shown the violence and have shown the innate meanness as do get into some of the defendants on various other occasions and as you know from criminal records that appear. I think it is totally absent here and I should appreciate it if the Court, in considering the sentence and recommendations of the Government, would take that into consideration.

THE COURT: I think it is just exactly a year ago today that Mr. Young and Mrs. Young appeared in this court, isn't that correct?

BOTH DEFENDANTS: Yes, your Honor.

THE COURT: And didn't you indicate to me at that time that you wanted to get all these criminal matters disposed of?

THE DEFENDANT MR. YOUNG: We did, your Honor.

THE COURT: And pay whatever debt you owe, if you use that phrase, and then start over again?

THE DEFENDANT MR. YOUNG: That was our hope.

THE COURT: Do you have anything to tell me as to why you didn't stay with that purpose and why you broke jail here?

THE DEFENDANT MR. YOUNG: I am afraid I can't quite understand it myself. We never had no plans up to the time we left.

THE COURT: You people really represent a great tragedy. From everything I can learn about you, with the exception of your criminal activities you are both very intelligent, personable, people like you; you are able, [fol. 13] energetic. If you had used those abilities in a normal and law abiding way, I have no doubt but what you could have been successful and happy people. But, with the records that you have, I am convinced that you are confirmed criminals and that this Court must impose substantial periods of confinement. I have carefully gone over the reports of the Probation Officer. I am not going to sentence you for the things that you did outside of this jurisdiction, of course. There are many other charges pending against you but naturally, I am going to take that and must take that into consideration in determination whether or not leniency should be exercised in imposing sentences in these cases. After giving it careful thought, I am of the opinion that the recommendation of the District Attorney is justified.

Thomas Edward Young, it is the sentence of this Court that in case No. 8048, as to Count 1 you be confined in an institution to be designated by the Attorney General of the United States for a period of five years; that you also be confined on Count 2 for a period of five years. Margaret Rita Young, it is the sentence of this Court that you be confined in an institution to be designated by the Attorney General of the United States under Count 1 for a period of five years and under Count 2 for a period of five years.

As to case No. 8052, in which you, Mr. Young, are the sole defendant, and that is the case of the first Dyer Act charge, it is the sentence of the Court that you be confined for a period of five years.

[fol. 14] As to case No. 8136, on Court 1, which charges the two of you jointly, it is the sentence of the Court that each of you be confined for a period of five years. On Count 2, you, Thomas Edward Young, it is the sentence of the Court that you be confined for a period of five years. On Count 3, it is the sentence of the Court that you, Margaret Rita Young be confined for a period of five years.

It is the order of this Court that these sentences be served consecutively, which means for you, Mr. Young, a total sentence of 25 years and for you, Mrs. Young, a total sentence of 20 years.

• • • •

[fol. 15] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 16] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION

No. Cr. 8048

UNITED STATES OF AMERICA

v.

THOMAS EDWARD YOUNG

JUDGMENT AND COMMITMENT—October 31, 1952

On this 31st day of October, 1952 came Harry Lashkowitz, Assistant U. S. Attorney, the attorney for the government and the defendant appeared in person and with his counsel, Donald H. Crothers, of Fargo, North Dakota,

IT IS ADJUDGED that the defendant has been convicted upon his plea of guilty of the offenses of unlawfully breaking into Postoffices at Milton and Munich, North Dakota, with intent to commit larceny therein, in violation of Title 18, Section 2115, U.S.C., as charged in the Information and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) years on Count One of the Information to commence at Twelve o'clock noon of this date; and for a period of Five (5) years on Count Two of the Information; said sentences to run consecutively with each other.

MB#13,667
COB#1,582

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Charles J. Vogel,
United States District Judge.

[fol. 17] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION

No. Cr. 8052

UNITED STATES OF AMERICA

v.

THOMAS EDWARD YOUNG

JUDGMENT AND COMMITMENT—October 31, 1952

On this 31st day of October, 1952 came Harry Lashkowitz, Assistant U. S. Attorney, the attorney for the government and the defendant appeared in person and with his counsel, Donald H. Crothers, of Fargo, North Dakota,

IT IS ADJUDGED that the defendant has been convicted upon his plea of guilty of the offense of unlawfully transporting a stolen motor vehicle from Milton, North Dakota, to Moorhead, Minnesota, in violation of Title 18, Section 2312, U.S.C. as charged in the Amended Information and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) years and this said sentence to commence at the expiration of the sentence this day imposed in Criminal Case No. 8048.

MB#13,667
COB#1,583

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Charles J. Vogel,
United States District Judge.

• • • •

[fol. 18] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

No. Cr. 8136

United States of America

v.

Thomas Edward Young

Judgment and Commitment—October 31, 1952

On this 31st day of October, 1952 came Harry Lashkowitz, Assistant United States Attorney, the attorney for the government and the defendant appeared in person

and [1] with his counsel, Donald H. Crothers, of Fargo, North Dakota,

IT IS ADJUDGED that the defendant has been convicted upon his plea of [2] guilty of the offenses of unlawfully transporting a stolen motor vehicle from Fargo, North Dakota, to Britton, South Dakota, knowing said motor vehicle had been stolen, in violation of Title 18, Section 2312, U.S.C.; and unlawfully escaping from the custody of Marshal and Keeper of Cass County Jail where he was confined under order issued by United States Court, in violation of Title 18, Section 751, U.S.C.; as charged [3] in the Indictment in Counts 1 and 2 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of [4] Five (5) years on Count 1 of the Indictment, and for a period of Five (5) years on Count 2 of the Indictment, said sentences to run consecutively, and the sentence in this case to commence at the expiration of the sentence this date imposed in Criminal Case No. 8052.

MB#13,668
COB#1,585

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Charles J. Vogel,
United States District Judge.

• • • •

[fol. 19] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION

No. Cr. 8048

UNITED STATES OF AMERICA

v.

MARGARET RITA YOUNG

JUDGMENT AND COMMITMENT—October 31, 1952

On this 31st day of October, 1952 came Harry Lashkowitz, Assistant U. S. Attorney, the attorney for the government and the defendant appeared in person and [1] with her counsel, Donald H. Crothers, of Fargo, North Dakota,

IT IS ADJUDGED that the defendant has been convicted upon her plea of [2] guilty of the offenses of unlawfully breaking into Postoffices at Milton and Munich, North Dakota, with intent to commit larceny therein, in violation of Title 18, Section 2115, U.S.C., as charged [3] in the Information and the court having asked the defendant whether she has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of [4] Five (5) years on Count One of the Information to commence at Twelve o'clock noon of this date; and for a period of Five (5) years on Count Two of the Information; said sentences to run consecutively with each other.

MB#13,666
COB#1,581

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Charles J. Vogel,
United States District Judge.

* * * *

[fol. 20] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

No. Cr. 8136

UNITED STATES OF AMERICA

v.

MARGARET RITA YOUNG

JUDGMENT AND COMMITMENT—October 31, 1952

On this 31st day of October, 1952 came Harry Lashkowitz, Assistant U. S. Attorney, the attorney for the government and the defendant appeared in person and [1] with her counsel, Donald H. Crothers, of Fargo, North Dakota,

IT IS ADJUDGED that the defendant has been convicted upon her plea of [2] guilty of the offenses of unlawfully transporting a stolen motor vehicle from Fargo, North Dakota, to Britton, South Dakota, knowing said motor vehicle had been stolen, in violation of Title 18, Section 2312, U.S.C.; and unlawfully escaping from the custody of Marshal and Keeper of Cass County Jail where she was confined under order issued by United States Court, in violation of Title 18, Section 751; U.S.C.; as charged [3]

in the Indictment in Counts 1 and 3 and the court having asked the defendant whether she has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) years on Count 1 of the Indictment, and for a period of Five (5) years on Count 3 of the Indictment, said sentences to run consecutively, and the sentence in this case to commence at the expiration of the sentence this date imposed in Criminal Case No. 8048.

MB#18,667
COB#1,584

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Charles J. Vogel,
United States District Judge.

• • • •

[fol. 21] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION
FARGO, NORTH DAKOTA

Criminal Nos. 8048, 8052 & 8136

UNITED STATES OF AMERICA, PLAINTIFF

v.

THOMAS EDWARD YOUNG, and MARGARET RITA YOUNG,
DEFENDANTS-PETITIONERS

MOTION TO CORRECT JUDGMENT AND COMMITMENT—Filed June 5, 1959

Come now Thomas Edward Young, and Margaret Rita Young, hereinafter called the petitioners and respectfully move the Court to correct the judgment and commitments on each of the above-entitled informations and indictment to reflect that the sentences imposed thereupon commenced to run on the date of imposition, and on October 31, 1952, in accordance with Section 3568 of Title 18, U.S.C.

The petitioners file herewith a memorandum made in support hereof.

/s/ Thomas Edward Young
THOMAS EDWARD YOUNG, Petitioner
Box 1162, Alcatraz, California

Margaret Rita Young, Petitioner
MARGARET RITA YOUNG, Petitioner
Box 7, Terminal Island
San Pedro, California

[fol. 22]

* * * *

MEMORANDUM IN SUPPORT OF MOTION TO CORRECT JUDGMENTS AND COMMITMENTS (omitted in printing)

* * * *

[fol. 23] (File Endorsement Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

Criminal Nos. 8048, 8052 and 8136

UNITED STATES OF AMERICA, PLAINTIFF

-VS-

THOMAS EDWARD YOUNG, and MARGARET RITA YOUNG, DEFENDANTS

APPEARANCES:

Mr. Robert L. Vogel, United States Attorney, Fargo, North Dakota, for Plaintiff.

Thomas Edward Young and Margaret Rita Young, pro se.

MEMORANDUM OPINION—June 19, 1959

On October 31, 1952, the above-named defendants, Thomas Edward Young and Margaret Rita Young, his wife, were sentenced in this court upon their respective pleas of guilty in the above-numbered criminal cases, Thomas Edward Young to a total of 25 years and Margaret Rita Young to a total of 20 years.

On June 5, 1959, these two defendants filed with this Court a motion to correct the judgments and commitments in each of the above-numbered cases "to reflect that the sentences imposed thereupon commenced to run on the date of imposition, and on October 31, 1952, in accordance with Section 3568 of Title 18, U.S.C." and have filed also a memorandum brief in support of their position.

Although the motion is signed by Thomas Edward Young only, now confined in Alcatraz, and not by Mar- [fol. 24] garet Rita Young, now confined at Terminal Island, San Pedro, California, the motion is being treated as having been made by both defendants. The Court also has had the benefit of a memorandum brief filed by

the United States Attorney for this District, Mr. Robert L. Vogel.

The defendants contend that the sentencing Court failed to direct the sequence of service of the sentences pronounced October 31, 1952, and hence that all sentences imposed began to run on that date and that, with credits for statutory good time, the defendants, and each of them, have completed service of the longest of the sentences imposed in any of the individual cases.

Simply stated, the defendants contend their sentences should run concurrently and not consecutively, that they have served their full time, taking into account good time credit, and they desire the judgments and commitments corrected *nunc pro tunc*. The legal effect of granting defendants' motion would be to afford them their freedom.

Defendants contend also that the sentences imposed in No. 8048 as shown by the judgments and commitments are impossible of service, contending that the wording "said sentences to run consecutively with each other" is uncertain and should be construed as meaning the sentences are concurrent.

The judgment of the Court at the time of sentencing, as evidenced by the official transcript of the proceedings, was as follows:

> "Thomas Edward Young, it is the sentence of this Court that in case No. 8048, as to Count 1 you be confined in an institution to be designated by the Attorney General of the United States for a period [fol. 25] of five years; that you also be confined on Count 2 for a period of five years. Margaret Rita Young, it is the sentence of this Court that you be confined in an institution to be designated by the Attorney General of the United States under Count 1 for a period of five years and under Court 2 for a period of five years.
>
> "As to case No. 8052, in which you, Mr. Young, are the sole defendant, and that is the case of the first Dyer Act charge, it is the sentence of the Court that you be confined for a period of five years.
>
> "As to case No. 8136, on Count (sic) 1, which charges the two of you jointly, it is the sentence of

the Court that each of you be confined for a period of five years. On Count 2, you, Thomas Edward Young, it is the sentence of the Court that confined for a period of five years. On Count 3, it is the sentence of the Court that you, Margaret Rita Young be confined for a period of five years.

"It is the order of this Court that these sentences be served consecutively, which means for you, Mr. Young, a total sentence of 25 years and for you, Mrs. Young, a total sentence of 20 years."

The judgments and commitments were signed by the sentencing Judge on the same day the sentences were imposed and read as follows:

Case No. 8048—Thomas Edward Young;

"It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his [fol. 26] authorized representative for imprisonment for a period of Five (5) years on Count one of the Information to commence at Twelve o'clock noon of this date; and for a period of Five (5) years on Count Two of the Information; said sentences to run consecutively with each other."

Case No. 8052;

"It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) years and this said sentence to commence at the expiration of the sentence this day imposed in Criminal Case No. 8048."

Case No. 8136;

"It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) years on Count 1 of the Indictment, and for a period of Five (5) years on Count 2 of the Indictment, said sentences to run consecutively, and the sentence in this case to commence at the expiration of the sentence this date imposed in Criminal Case No. 8052."

Case No. 8048—Margaret Rita Young;

> "It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) years on Count One of the information to commence at Twelve o'clock noon of this date; and for a period of Five (5) years on Count Two of the Information; said sentences to run consecutively with each other."

[fol. 27] Case No. 8136;

> "It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) years on Count 1 of the Indictment, and for a period of Five (5) years on Count 3 of the Indictment, said sentences to run consecutively, and the sentence in this case to commence at the expiration of the sentence this date imposed in Criminal Case No. 8048."

Let us carefully examine the defendants' contention that the sentences imposed in No. 8048 are impossible of service in that the commitment reads "said sentences to run consecutively with each other". Where is the impossibility of service when the Judge's sentence is read in its entirety? No. 8048 involves separate post office break-ins, one at Munich, North Dakota, and the other at Milton, North Dakota. The defendants were sentenced to five years on each count of that information, and it requires no interpretation of this Court since the language employed by the sentencing Judge was clear and unequivocal. He commenced imposition of punishment with the cases in numerical order and in sequence as to counts. Significantly, he specifically ordered "that these sentences be served consecutively, which means for you, Mr. Young, a total sentence of 25 years and for you, Mrs. Young, a total sentence of 20 years." The Supreme Court of the United States has said: "The only sentence known to the law is the sentence or judgment entered upon the records of the Court." Hill, Warden, v. United States

ex rel. Wampler, 298 U.S. 460, 464. In that case the Court also held that "A warrant of commitment departing in matter of *substance* from the judgment back of it is void." P. 465, (underlining supplied).

[fol. 28] The opinion and order of this Court are predicated upon the sentences pronounced by the sentencing Judge on Thomas Edward Young and Margaret Rita Young from the bench as reflected by the official transcript of the proceedings. The judgment and commitments prepared by the Clerk of Court and signed by the sentencing Judge in all three of these cases did no more than reflect the clearly expressed sentences imposed, and there was no departure in any matter of substance in these instruments from the sentences imposed in open court on the defendants here.

In United States v. Daugherty, 269 U.S. 360, 363, the Court said:

> "Sentences in criminal cases should reveal with fair certainty the intent of the court and exclude any serious misapprehensions by those who must execute them. The elimination of every possible doubt cannot be demanded. Tested by this standard the judgment here questioned was sufficient to impose total imprisonment for fifteen years made up of three five-year terms, one under the first count, one under the second and one under the third, to be served consecutively, and to follow each other in the same sequence as the counts appeared in the indictment. This is the reasonable and natural implication from the whole entry."

Tested by this pronouncement, the reasonable and natural and, in fact, the only implication from the sentences imposed by the Court upon Mr. and Mrs. Young is that they were to serve each five year sentence consecutively. In Thomas Edward Young's case the Court clearly intended that in No. 8048 he was to serve five years on Count 1 and five years on Count 2. In No. [fol. 29] 8052 he was to serve five years, and in No. 8316 he was to serve five years on Count 1 and five years on Count 2, all consecutively.

In Margaret Rita Young's case the Court clearly intended that in No. 8048 she was to serve five years on Count 1 and five years on Count 2, and in No. 8136 that she was to serve five years on Count 1 and five years on Count 3, all consecutively.

Defendants in their brief make much of the fact that the sentencing Judge directed the sentences imposed to be served consecutively without actually specifying from the bench the sequence in which they were to be served. A relatively recent opinion expressed with great clarity the position taken by the United States Court of Appeals for the Fifth Circuit which, being short, well-reasoned and concise, is here quoted, footnotes omitted:

> "Arthur M. Fulton was convicted in the District Court for the Northern District of Texas, on two indictments for unlawfully breaking into and entering the United States Post Offices at Abilene and at Putnam, Texas and with stealing money of the United States from these post offices. On the Abilene indictment he was sentenced to five years imprisonment on each of two counts, the sentence on the second count 'to run consecutively with' the sentence on the first count. On the Putnam indictment he was sentenced to five years imprisonment 'to run consecutively with' the sentence imposed under the conviction on the Abilene indictment.
>
> "This appeal raises the question: Do the words '*run consecutively with*' in the Putnam judgment clearly require the prisoner to serve a second term after serving the sentence imposed in the Abilene judgment? Fulton argues that the words '*consecutively*' and '*with*' may be clear enough when standing alone or when used separately in other combinations of words, but that they defeat each other when they are placed side by side. He contends that in juxtaposition 'consecutively' and 'with' mean, if anything, 'concurrently with'. He moved for clarification of the sentence in the Putnam case and now appeals from denial of that motion.

"Precisely the same question came up in Hiatt v. Ellis, 5 Cir., 1951, 192 F.2d 119. This Court distin-
[fol. 30] guished United States ex rel. Chasteen v. Denemark, 7 Cir., 1943, 138 F.2d 289, relied on by appellant, and held that *'consecutively with'* was unambiguous. In Hiatt v. Ellis, supra, Judge Hutcheson stated:

> "'The word 'consecutive' used in the sentence, according to its primary dictionary definition, denotes 'following in a train, succeeding one another in a regular order'. The word 'with' which follows it in the sentence denotes primarily 'a relation of contact or association'. The idea put forward by the petitioner and adopted by the court, that the use of 'with' instead of 'to' makes the order ambiguous and renders it ineffective, will not do.
>
> "'It would be difficult to choose two words better able than the words employed here to put in brief compass the idea of cumulative service, the service of one sentence following in the train of, succeeding, the other sentence referred to.'

"'Consecutive with' may be infelicitous. It may offend purists in the art of using prepositions idiomatically. But it is not a riddle. It is not illogical. It is not uncertain. It is not ungrammatical. American-English has wide play in the joints, and a predilection for a particular preposition to express a relationship may go against usage if the choice of preposition results in meaningful language. Either 'to' or 'with' would show that there is a relation between the two sentences of imprisonment. What that relation is, is embodied in the meaning of 'consecutive'. 'Consecutive' sentences can mean only a close and uninterrupted sequence of sentences. The distinguished district judge's language is clear and definite and technically correct. The judgment is

"Affirmed." Fulton v. United States of America, 5th Cir., 1957, 250 F.2d 281.

Beyond doubt any serious uncertainty in criminal sentences ought to be resolved in favor of one restrained of

his liberty. In the instant case the Court finds neither serious uncertainty nor uncertainty in any respect. It must not be forgotten that the District Judge was vested with the power and authority to require the sentences imposed upon Mr. and Mrs. Young to be served consecutively. This he did.

[fol. 31] It is not necessary to abandon all logic and reason in examining a motion of this sort. The sentences were handed down in open court, case by case, and count by count, and the Youngs were told the sentences were to be served consecutively. To further clarify his order, the Court advised the Youngs of the total number of years each would be required to serve.

It was the clear and obvious intention and direction of the Court, as disclosed by the official proceedings in court and without reference to the judgments and commitments signed thereafter, that the sentences imposed upon Young and his wife were to be served in the order pronounced.

This means, and could mean only that the defendant, Thomas Edward Young, began his period of confinement with Count 1 in Case No. 8048; that at the termination of that sentence he began serving the sentence pronounced on Count 2 in Case No. 8048; that at the termination of that sentence he began to serve the sentence pronounced in No. 8052; that upon termination of that sentence he began serving a sentence pronounced on Count 1 in No. 8136; and that upon termination of that sentence he began serving the sentence pronounced in Count 2 of No. 8136.

And it means, and could mean only that the defendant, Margaret Rita Young, began her period of confinement with Count 1 in No. 8048; that at the termination of that sentence she began to serve the sentence pronounced in Count 2 of No. 8048; that at the termination of that sentence she began serving the sentence pronounced on Count 1 of No. 8136; and that upon termination of that sentence she began to serve the sentence imposed on Count 3 of No. 8136.

[fol. 32] Any other conclusion is untenable and would completely nullify the expressed and manifest intention of the District Judge whose province and duty it was to determine the sentences and who, in the exercise of his discretion, ordered them served consecutively.

The motion of Thomas Edward Young and Margaret Rita Young to correct the judgment and commitments in Criminal Cases Nos. 8048, 8052 and 8136, respectively, is in all things denied.

Dated at Fargo, North Dakota, this 19th day of June, A. D., 1959.

/s/ Ronald M. Davies
United States District Judge

[fol. 33] (File Endorsement Omitted)

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA
FARGO, NORTH DAKOTA

Cr. Nos. 8048, 8052 and 8136

UNITED STATES OF AMERICA, PLAINTIFF

v.

THOMAS EDWARD YOUNG and MARGARET RITA YOUNG, APPELLANTS

NOTICE OF APPEAL—Filed June 29, 1959

Name and address of appellants:

Thomas Edward Young, Box 1162, Alcatraz, California, and Margaret Rita Young, Box 7, Terminal Island, San Pedro, California.

Name of Attorney: Pro se.

[fol. 34] Concise statement of Judgment:

Denial of motion to correct Judgments and commitments in cases Nos. 8048, 8052, 8136. (Rule 36 FRCP.)

Order appealed from: Memorandum Opinion.

Date of order: June 19, 1959

Name of Judge: Hon. Ronald N. Davies

Notice of appeal is hereby given from the aforesaid order to the U.S. Court of Appeals for the Eighth Circuit.

/s/ Thomas Edward Young, Appellant
THOMAS EDWARD YOUNG
Box 1162
Alcatraz, California.

Margaret Rita Young, Appellant
MARGARET RITA YOUNG,
Bo 7 Terminal Island
San Pedro, California

Posted June 23, 1959.

[fol. 35] IN UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 16,287

THOMAS EDWARD YOUNG and MARGARET RITA YOUNG, APPELLANTS

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of North Dakota

OPINION—February 11, 1960

Before JOHNSEN, Chief Judge, WOODROUGH and MATTHES, Circuit Judges.

JOHNSEN, Chief Judge.

Appellants, who are husband and wife, are under conviction and sentence for a number of different offenses, including some Post Office burglaries. Involved in the proceeding before us are five consecutive sentences of five years each, or a total of 25-years imprisonment, against the husband, and four consecutive sentences of five years [fol. 36] each, or a total of 20-years imprisonment, against the wife.

This proceeding is the third attack upon the sentences referred to which has been attempted to be made by appellants through motions under 28 U.S.C.A. § 2255. The grounds and results of their previous attacks are set forth in *Young* v. *United States*, 8 Cir., 228 F.2d 693, 246 F.2d 901, 259 F.2d 641.

The instant motion, which was denied by the District Court on the face of the record of the sentencing proceedings, seeks to have it declared that the form and effect of the court's pronouncement legally left all of the sentences against each of appellants as concurrent and not consecutive in their operation, and further seeks to have the

language of the signed judgment and commitment modified to so reflect.

The sentences had all been imposed at the same time in three separate criminal proceedings. The court, in making its pronouncement, dealt with each of the proceedings in its chronological order, and with each separate count therein in its numerical sequence. No ambiguity or question therefore exists as to the order and sequence in which the several sentences actually were imposed and pronounced.

The pronouncement of the court was made in the following form and expression:

> "Thomas Edward Young, it is the sentence of this Court that in case No. 8048, as to Count 1 you be confined * * * for a period of five years; that you also be confined on Count 2 for a period of five years. Margaret Rita Young, it is the sentence of this Court that you be confined * * * under Count 1 for a period of five years and under Count 2 for a period of five years.
>
> [fol. 37] "As to case No. 8052, in which you, Mr. Young, are the sole defendant, * * * it is the sentence of the Court that you be confined for a period of five years.
>
> "As to case No. 8136, on Count 1, which charges the two of you jointly, it is the sentence of the Court that each of you be confined for a period of five years. On Count 2, you, Thomas Edward Young, it is the sentence of the Court that you be confined for a period of five years. On Count 3, it is the sentence of the Court that you, Margaret Rita Young, be confined for a period of five years.
>
> "It is the order of this Court that these sentences be served consecutively, which means for you, Mr. Young, a total sentence of 25 years and for you, Mrs. Young, a total sentence of 20 years."

Like the court below, we are unable to see how this can be claimed, in ordinary understanding, to present any doubt as to the court's intent or as to the meaning which would be conveyed to the appellants thereby, or how a

commitment drawn in conformity thereto could leave any uncertainty on the part of prison officials as to the mode of its execution and operation.

Here the signed judgment and commitment was made to set out the several sentences in the order in which they had been pronounced. As to the sentences in case No. 8048, there was added immediately following their enumeration a recital that they were "to run consecutively with each other". As to case No. 8052, a recital similarly was inserted, after statement of the sentence, that it was "to commence at the expiration of the sentence • • • in Criminal Case No. 8048". And as to case No. 8136, following the listing of the sentences, there was a provision that they were "to run consecutively", and that those as to the husband were "to commence at the expiration of the sentence • • • in Criminal Case No. 8052", while [fol. 38] those as to the wife were "to commence at the expiration of the sentence • • • in Criminal Case No. 8048".

While the language of the judgment and commitment thus was more detailed and precise than that of the pronouncement, it nevertheless was, as the trial court held, without any departure, except in its form, from the plain indication of intent, significance and operativeness reflected by the pronouncement in its whole.

*United States* v. *Daugherty*, 269 U.S. 360, 46 S.Ct. 156, 70 L.Ed. 309, lends support and confirmation to the views which have just been expressed. In that case, the defendant had been convicted on each of the three counts in an indictment and the trial court had imposed a sentence "for the term of five (5) years on each of said three counts", with the proviso added, "Said term of imprisonment to run consecutively and not concurrently".

An appeal was taken by the defendant to this Court to have it established that this created only a five-year and not a fifteen-year term, and this Court held that, notwithstanding the proviso in the pronouncement and judgment that the sentences were "to run consecutively", they were required in the situation to be given a concurrent operation, because there had been no specification as to their "order of sequence". *Daugherty* v. *United States*, 8 Cir., 2 F.2d 691, 692.

The Supreme Court granted certiorari, reversed, and said, 269 U.S. at 363:

> "Sentences in criminal cases should reveal with fair certainty the intent of the court and exclude any serious misapprehensions by those who must execute them. The elimination of every possible doubt cannot be demanded. Tested by this standard the judgment here questioned was sufficient to impose total [fol. 39] imprisonment for fifteen years made up of three five-year terms, one under the first count, one under the second and one under the third, to be served consecutively and to follow each other in the same sequence as the counts appeared in the indictment. This is the reasonable and natural implication from the whole entry. The words 'said term of imprisonment to run consecutively and not concurrently' are not consistent with a five-year sentence."

Appellants argue, however, that this recognition of operational sequence from reasonable and natural implication, where the court has declared in its pronouncement that the sentences are to run consecutively and not concurrently, cannot be regarded as having any application to sentences imposed on separate indictments but at most to those imposed on the counts of the same indictment.

It is true that the sentences involved in the *Daugherty* case were on counts of the same indictment. And at the time of *Daugherty*, there was an old habeas-corpus decision (1887) by Mr. Justice Bradley, sitting on circuit, *United States* v. *Patterson*, C.C., D.N.J., 29 F. 775, where a sentence "That the prisoner be confined * * * for the term of five years upon each of the three indictments above named, said terms not to run concurrently" was held to be too uncertain as to sequence to entitle the terms to a consecutive operation, because the pronouncement did not specify "the order in which they were to run". 29 F. at 778. Also, this Court, in a two-to-one decision, *Biddle* v. *Hall* (1926), 15 F.2d 840, had applied the holding of the *Patterson* case to two sentences of a year and a day imposed on separate indictments, which the pronouncement declared were not to run concurrently.

The opinion in *Daugherty* made reference to the *Patterson* case, on which this Court had relied in its holding, [fol. 40] 2 F.2d 691, and said, "We think the reasoning of that opinion is not applicable to the present situation". 269 U.S. at 363. It further remarked that "The question there was materially different from the one here presented which concerns *counts* in an indictment". Ibid. We do not, however, regard this as constituting any implied recognition or approval on the part of the Supreme Court of an absolute and artificial rule that, no matter what a court may have done and said in imposing sentences on separate indictments, such sentences cannot at all have any consecutive or successive operation, unless the court expressly specifices the sequence in which they are to be served.

As a matter of fact, while this is the effect which appellants seek to have imputed to *Patterson*, we do not believe that the uncertainty which that case and *Hall*, supra, regarded as existing as to intended sequence in the situations there involved is required or is entitled to be extended beyond the facts which the opinions reveal, or that such facts have any relationship to the present situation.

Neither in *Patterson* nor in *Hall* does it appear that the court, in pronouncing sentence, took up the indictments separately and meted out punishment on them in their chronological order. Whatever uncertainty as to sequence of intended service might be argued to be capable of existing, where the court has not dealt with the indictments in their chronological order, or perhaps even where the pronouncement has referred to them only generally or collectively and without any individual identification, we do not believe presents any sound element of application or persuasion as to the present situation.

[fol. 41] Here, as has been indicated, each indictment was taken up by the court in its chronological order, identification was made of it by its individual docket number, and sentence was pronounced in relation to it before consideration was engaged in of the next proceeding. When all of the proceedings had been thus dealt with, the court made clear the intent, relationship and

significance of what was being done, by an express direction, as a part of its pronouncement, "that these sentences be served consecutively, which means for you, Mr. Young, a total sentence of 25 years and for you, Mrs. Young, a total sentence of 20 years".

Just as much as in the case of the separate counts in an indictment does the manner in which the court dealt with the separate indictments here make clear, it seems to us, on the basis of reasonable and natural understanding, the extent of the terms to be served and the sequence in which the sentences were intended to operate in effecting this result. As to *Patterson* and *Hall*, we therefore need not go further in our consideration than the distinction which we have made. Any attempt to recognize them as legally having any scope beyond this would, we think, make them wholly artificial and unconvincing.

Finally, appellants contend that the language in the signed judgment and commitment that the sentences on the two counts in case No. 8048 were "to run consecutively with each other" was without operable effect and that these sentences therefore had to be regarded as being concurrent. The language used in the pronouncement clearly made the sentences consecutive, as we have previously discussed. If the insertion of the phrase "with each other" in the judgment and commitment constituted any departure from the effect of the pronouncement, this [fol. 42] would be subject to being appropriately corrected. But we do not believe that, after separate specification of the sentences on the two counts in their numerical sequence, the use of the expression "to run consecutively with" could reasonably be regarded as having any other natural and contextual meaning in the situation than "consecutive to". A similar conclusion was reached in *Fulton* v. *United States*, 5 Cir., 250 F.2d 281, and we agree with the discussion in that opinion.

The denial made of appellants' motion is affirmed.

[fol. 43] (File Endorsement Omitted)

IN UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 16,287. September Term, 1959

THOMAS EDWARD YOUNG and MARGARET RITA YOUNG,
APPELLANTS

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court
for the District of North Dakota

JUDGMENT—February 11th, 1960

This Cause came on to be heard on the original files of the United States District Court for the District of North Dakota and on the briefs filed by the respective parties, without oral argument.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the Order of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

[fol. 44] Clerk's Certificate to foregoing transcript omitted in printing

[fol. 45] SUPREME COURT OF THE UNITED STATES

No. 814 Misc., October Term, 1959

THOMAS E. YOUNG, PETITIONER

vs.

UNITED STATES

On petition for writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—June 27, 1960

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1044 and placed on the summary calendar. It is assigned for argument immediately following No. 729, Misc.

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PETITION NOT PRINTED

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# IN THE SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1960**

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## No. 184

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THOMAS E. YOUNG,

*Petitioner,*

*vs.*

UNITED STATES.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

---

## BRIEF FOR THE PETITIONER

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*Attorneys for Petitioner*

December 30, 1960

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# IN THE SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1960**

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## No. 184

---

THOMAS E. YOUNG,

*Petitioner,*

*vs.*

UNITED STATES.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

---

## BRIEF FOR THE PETITIONER

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Raising the same fundamental issues as *Payne* v. *Madigan*, No. 180, the decision of the Court of Appeals sanctioned petitioner's continued federal imprisonment despite the failure of the sentencing court to specify clearly the commencement dates of petitioner's sentences on multiple indictments. Approval by the court below of such defective sentencing practices thus requires reaffirmation by this Court of the meticulously precise standards to be followed by trial courts in executing their solemn responsibility to impose criminal sentences.

## Opinions Below

The opinion of the Court of Appeals (R. 31-36) is reported at 274 F.2d 698 (8th Cir. 1960). The opinion of the District Court (R. 21-29) is reported at 174 F. Supp. 422 (D. N.D. 1959).

## Jurisdiction

The Judgment of the Court of Appeals (R. 37) was entered on February 11, 1960. A motion for leave to proceed *in forma pauperis* and a petition for a writ of certiorari were filed on March 1, 1960, and both the motion and petition were granted on June 27, 1960 (R. 38). Counsel for petitioner was appointed by this Court on October 10, 1960. The jurisdiction of this Court is founded on 28 U.S.C. §1254(1).

## Question Presented

Recognizing that the judicial pronouncement of sentence in open court did not specify the commencement dates of any of the five separate sentences imposed in three distinct criminal proceedings or declare their sequence, the Court of Appeals inferred these elements "on the basis of reasonable and natural understanding" flowing from the "manner" of the trial judge's imposition of sentence (R. 36).

Since criminal sentences must be imposed in the defendant's presence with "meticulously precise language," the central question presented is whether a sentencing pronouncement which omits to state the commencement dates of multiple criminal sentences may be cured by reference to a "reasonable and natural understanding" arising from the judge's "manner" in dealing with multiple indictments.

## Statutes and Rules Involved

Rule 20, Federal Rules of Criminal Procedure:

> A defendant arrested in a district other than that in which the indictment or information is pending against him may state in writing, after receiving a copy of the indictment or information, that he wishes to plead guilty or *nolo contendere*, to waive trial in the district in which the indictment or information is pending and to consent to disposition of the case in the district in which he was arrested, subject to the approval of the United States attorney for each district. Upon receipt of the defendant's statement and of the written approval of the United States attorneys, the clerk of the court in which the indictment or information is pending shall transmit the papers in the proceeding or certified copies thereof to the clerk of the court for the district in which the defendant is held and the prosecution shall continue in that district.

Rule 32, Federal Rules of Criminal Procedure:

> (a) Sentence. Sentence shall be imposed without unreasonable delay. Pending sentence the court may commit the defendant or continue or alter the bail. Before imposing sentence the court shall afford the defendant an opportunity to make a statement in his own behalf and to present any information in mitigation of punishment.
>
> (b) Judgment. A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The

judgment shall be signed by the judge and entered by the clerk.

Rule 43, Federal Rules of Criminal Procedure:

The defendant shall be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules.

## Statement

On October 31, 1952, petitioner and his wife appeared before the District Court for the District of North Dakota, Southeastern Division, for arraignment and sentencing on pleas of guilty to six counts of two separate informations and one indictment, which charged violations of diverse federal statutes by petitioner and his wife on three separate occasions (R. 1-4).[1]

After receiving a plea of guilty in No. 8136 and noting similar pleas entered a year earlier in No. 8052 and No. 8048 (R. 6), the district judge sentenced petitioner to confinement "for a period of five years" on the first count of the information in No. 8048, and stated that he "also be confined on Count 2 for a period of five years" (R. 11). "As to case No. 8052," the judge declared that petitioner "be

[1] The two-count information in No. 8048 was filed October 31, 1951 and alleged two joint violations of 18 U.S.C. §2115 by the defendants (R. 1). The amended information in No. 8052 was filed November 30, 1951 and accused petitioner of violating 18 U.S.C. §2312 (R. 2). The first count of the indictment in No. 8136, filed September 27, 1952, alleged a joint violation of 18 U.S.C. §2312 by the defendants, whereas both the second and third counts stated a separate violation by one of the defendants of 18 U.S.C. §751 (R. 3-4).

confined for a period of five years" (R. 11). On the first count of No. 8136, the judge stated that each of the defendants "be confined for a period of five years," and on the second count the judge imposed another five-year term of imprisonment upon petitioner (R. 11).

Concluding its pronouncement, the court stated without amplification "that these sentences be served consecutively, which means for you, Mr. Young, a total sentence of 25 years . . ." (R. 12).[2]

On June 19, 1959 (R. 21-29), the district court denied petitioner's motion that the Judgments and Commitments prepared after the judicial proceeding, which specified definite commencement dates for each of the various sentences, be revised to conform with the oral pronouncement of sentence in petitioner's presence (R. 20).[3] The court concluded that they did not depart "in any matter of substance" from the declaration in open court (R. 25). Stressing the fact that the sentences were announced "case by case, and count by count" (R. 28), the court found "neither serious uncertainty nor uncertainty in any respect" in the pronouncement of sentence (R. 28), and felt that it was the "clear and obvious intention and direction" of the sentencing court "that the sentences imposed upon Young and his wife were to be served in the order pronounced" (R. 28). Moreover, the court viewed the provision in the Judgment and Commitment in No. 8048 that the two sentences were "to run consecutively *with* each other" as denoting consecutive *to* each other, quoting authority that "American-English has wide play in the joints, and a predilection for a particular

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[2] Similarly, petitioner's wife was sentenced to five year terms on both counts of No. 8048, and the first and third counts of No. 8136 (R. 11).

[3] Although the motion was signed only by petitioner, the district court's opinion regarded it as made by both defendants (R. 21).

preposition to express a relationship may go against usage if the choice of preposition results in meaningful language" (R. 22-23, 27).

Although recognizing that sentences on multiple indictments must be clearly specified, the Court of Appeals for the Eighth Circuit affirmed. The court rejected as "arbitrary and artificial" the principle that sentences on multiple indictments "cannot at all have any consecutive or successive operation, unless the court expressly specifies the sequence in which they are to be served" (R. 35).

According to the court, moreover, the failure of the sentencing court to make the "detailed and precise" determination of the commencement date of each sentence contained in the subsequently prepared Judgments and Commitments was cured by the "manner" in which the sentencing court "dealt with" the several criminal proceedings (R. 33, 36). Since "each indictment was taken up by the court in its chronological order, identification was made of it by its individual docket number, and sentence was pronounced in relation to it before consideration was engaged in of the next proceeding," and the sentencing court also referred to the sentences to be served "consecutively," the Court of Appeals held that the sentencing pronouncement, "on the basis of reasonable and natural understanding," directed that the sentences be served in the order in which they were pronounced (R. 35, 36).

Granting that "the language of the judgment and commitment thus was more detailed and precise than that of the pronouncement," the Court of Appeals nevertheless viewed it as being "without any departure, except in its form, from the plain indication of intent, significance and operativeness reflected by the pronouncement in its whole" (R. 33).

## Summary of Argument

Federal judges must execute their solemn sentencing function in accord with fundamental procedural safeguards designed to protect the rights of the accused and to preserve public confidence in the administration of criminal justice.

To ensure minimal standards of clarity, this Court's *Daugherty* opinion in 1926 stressed that the trial judges should impose sentence with "meticulously precise language." Particularly where sentences are simultaneously imposed on multiple indictments, the sentencing judge is required to make an unequivocal determination of when each term of imprisonment is to begin and the order in which the sentences are to be served.

The court below approved a pronouncement of sentence which failed to comply with these essential requirements of judicial clarity. Acknowledging that the trial judge had failed to make any *express* declaration of the commencement dates of petitioner's sentences, the Court of Appeals dismissed such a requirement as "an absolute and artificial rule," and permitted this vital element of petitioner's sentences to be inferred "on the basis of reasonable and natural understanding" from the "manner" under which the sentencing judge "dealt with" the several indictments.

The sentencing pronouncement sanctioned below does not measure up to those high standards which this Court enforces in the administration of criminal justice in the federal courts. The judge's failure to make an express determination of an essential element of petitioner's sentences on *multiple indictments* violates the principle of Mr. Justice Bradley's *Patterson* opinion, as preserved in this Court's

subsequent *Daugherty* doctrine that criminal sentences should be declared with "meticulously precise language."

Moreover, the collateral circumstances culled by the Court of Appeals to justify an inference of the order of service from the sentencing judge's "manner" cannot rationally bridge the void between the judge's failure to fix the sequence of multiple sentences and the later rationalization to run them in "the order pronounced."

Especially in light of the more specific requirements of sentencing sequence approved for use in the federal courts by Form 25 of the Federal Rules of Criminal Procedure, this Court should reaffirm that the judicial pronouncement of sentence in open court is a solemn responsibility to be executed according to the most rigorous standards of judicial clarity and dignity.

## ARGUMENT

### I.

### A Judicial Pronouncement Simultaneously Imposing Criminal Sentences on Several Diverse Indictments Must Specify the Commencement Date of Each Sentence to Be Served.

Courts imposing sentences of imprisonment exercise a solemn responsibility subject to sharply limited appellate review.[4] More than thirty years ago this Court sought to ensure the exercise of this discretion in a manner calculated to protect the rights of the accused and to preserve public confidence in the administration of criminal justice. Thus

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[4] See discussion in Brief for Petitioner, pp. 10-11, *Payne* v. *Madigan*, No. 180.

in *United States* v. *Daugherty*, 269 U.S. 360, 363 (1926), this Court stressed that sentences must be stated with "meticulously precise language," and emphasized that "Especial care is essential where sentences for crime are imposed." *Id.* at 364.[5]

Compliance with such rigorous standards of clarity requires that courts imposing simultaneous sentences on diverse indictments specify the commencement date of each sentence so that the sequence of service is clear. Because any sentence of imprisonment ordinarily commences to run from the date the defendant is delivered into the custody of the appropriate officials, regardless of the number of sentences imposed, any departure from this established practice through the court's discretionary exercise of its power to postpone the service of a criminal sentence must be clearly enunciated in the presence of the defendant.[6]

The particular requirements for the imposition of multiple sentences on diverse indictments were early and authoritatively set forth in Justice Bradley's opinion in *United States* v. *Patterson*, 29 Fed. 775 (C.C. D. N.J. 1887). Criticizing an oral pronouncement of sentence on three indictments which provided that "Said terms [were] not to run concurrently," Justice Bradley held that such a declaration was "uncertain and incapable of application," and defective because it omitted to state the commencement date of the sentence on each indictment by "specifying the order

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[5] As acutely observed in *Simunov* v. *United States*, 162 F.2d 314, 315 (6th Cir. 1947), "It is imperative in maintaining respect for the judgments of courts that sentences in criminal cases should not be equivocal. This is more vital than the interests of a particular defendant in a criminal case."

[6] See 18 U.S.C. §3568, and the more extensive development of this point in Brief for Petitioner, pp. 11-12, *Payne* v. *Madigan*, No. 180.

in which they were to run." *Id.* at 778. Hence, *Patterson* reaffirmed the established doctrine that multiple sentences pronounced simultaneously are presumed to run from the date of their imposition, in the absence of a clear and specific direction to the contrary by the judge. *Ibid.*[7]

This Court's later opinion in the *Daugherty* case confirms that sentences imposed on *multiple indictments* must clearly direct an order of service. Although tolerating a lesser standard of specificity for sentences pronounced on the numbered counts of a *single indictment*, *Daugherty* reaffirmed the *Patterson* rule for cases involving separate criminal indictments. *United States* v. *Daugherty*, 269 U.S. 360, 363 (1926).

While the distinction drawn by Mr. Justice McReynolds' *Daugherty* opinion may be supported by the differences between prosecution of *multiple* indictments and multiple counts of a *single* indictment,[8] *Daugherty's* broader doctrine may in any event be superseded today. The Judgment and Commitment form attached as Form 25 to the Federal Rules of Criminal Procedure provides for an express specification of the commencement date of each sentence imposed with reference to any other sentence, even where based on multiple counts of a single indictment. Even though not mandatory in nature, Form 25 reflects an authoritative judgment that less uncertainty is appropriate in the imposition of criminal sentences than *Daugherty* had tolerated twenty years before.

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[7] See also, *e.g.*, *United States* v. *Denemark*, 138 F.2d 289 (7th Cir. 1943); *Hode* v. *Sanford*, 101 F.2d 290 (5th Cir. 1939); *Biddle* v. *Hall*, 15 F.2d 840 (8th Cir. 1926).

[8] See the discussion at pp. 13-14 in Brief for Petitioner, *Payne* v. *Madigan*, No. 180.

## II.

**The Decision Below Improperly Inferred the Commencement Dates of Petitioner's Sentences From the Judge's Overall "Manner" in Handling the Multiple Indictments.**

Although the sentencing court here failed to make any determination of the commencement dates of the several sentences to be served by petitioner, the Court of Appeals improperly permitted this basic element to be left to surmise from the overall "manner" in which the court "dealt with" the diverse criminal proceedings.

In simultaneously imposing on petitioner five-year terms on *five counts of three separate indictments* and informations, the judge's pronouncement failed to define the commencement dates of the sentences in any specific sequence. Admittedly "the language of the judgment and commitment thus was more detailed and precise than that of the pronouncement . . . " (opinion below, R. 33). The uncertainty left by the judge's directive was compounded by the obscure Judgment and Commitment in Case No. 8048 ordering the two sentences "to run consecutively *with* each other" (R. 17).[9]

Disparaging any requirement of an express specification as "an absolute and artificial rule" (R. 35), the Court of

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[9] Compare *Bledsoe* v. *Johnston*, 154 F.2d 458 (9th Cir. 1946), *cert. denied*, 328 U.S. 872 (1946) (provisions that each of two sentences is "to run consecutively with" the other held ineffective); *Biddle* v. *Hall*, 15 F.2d 840 (8th Cir. 1926) (provisions that each of two sentences is to start on a specific date and "not to run concurrent with" the other held ineffective). Even assuming that "consecutive with" may be considered equivalent to "consecutive to", the defect remains, since, in the absence of a prescribed sequence, separate sentences cannot be served "consecutive *to each other*" with any greater ease than they can be served "consecutive with each other."

Appeals inferred from the "manner" of the sentencing judge that petitioner was to serve his sentences in the same "chronological" order in which they were imposed. In the court's view, the *Patterson* rule did not apply because the sentencing court in this case "took up the indictments separately and meted out punishment on them in their chronological order," and illuminated "the intent, relationship and significance of what was being done" by its direction "that these sentences be served consecutively" (R. 35-36), and totalled twenty-five years for petitioner. From this, the court felt, flowed the "reasonable and natural understanding" that the judge meant the sentences to be served in the same order in which the separate indictments had been "dealt with" during the sentencing proceeding.

But the essential details of criminal sentences omitted by the judge cannot be implied by the "reasonable and natural understanding" flowing from his "manner" of "dealing with" consolidated indictments. A judge's handling of diverse criminal proceedings in "chronological order" scarcely warrants the inference that the sentences imposed on each indictment are to be served consecutively in the "order" in which they are imposed. For neither the numbers assigned to the proceeding by the clerk nor the chronology of the statutory violations underlying multiple indictments can bear any rational relationship to the factors ordinarily considered in a judge's exercise of his plenary sentencing powers in separate criminal proceedings.[10]

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[10] It is not wholly clear whether the "chronological order" emphasized by the Court of Appeals (R. 35) pertained to the "numerical order" of the separate proceedings or to the chronology of the violations charged. As demonstrated by the *Payne* case, the numerical order of the cases does not necessarily relate to the *chronology* of the alleged offenses. Brief for Petitioner, p. 4 n. 1, *Payne* v. *Madigan*, No. 180.

In sum, the inferences sanctioned by the Court of Appeals cannot compensate for the failure of the sentencing court's pronouncement to specify the commencement dates for the various sentences. Since "It may fairly be said to be a presupposition of our law to resolve doubts in the enforcement of a penal code against the imposition of a harsher punishment," *Bell* v. *United States*, 349 U.S. 81, 83 (1955), courts surely cannot "resolve doubts" in a judge's inadequate sentencing pronouncement by resort to any "reasonable and natural understanding" radiated by his "manner" of handling separate indictments.

Nor, as detailed in Part III of petitioner's brief in *Payne* v. *Madigan*, may the written forms of Judgment and Commitment, prepared in defendant's absence, furnish the missing elements of sentences as pronounced by the judge in open court.

## Conclusion

For the above reasons, as well as those presented in more detail by petitioner's brief in the companion case of *Payne* v. *Madigan*, No. 180, the decision below should be reversed and remanded with direction that the petitioner, having served his lawful sentence, be discharged from imprisonment forthwith.[11]

Respectfully submitted,

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December 30, 1960

[11] As construed in accord with Mr. Justice Bradley's *Patterson* opinion, the sentencing pronouncement authorizes no more than *five* years of imprisonment. Since petitioner has been imprisoned for more than *ten* years with appropriate statutory deductions, he is entitled to release from any further illegal detention.

The sentencing court is obviously barred from sentencing petitioner so as to increase his sentence after its original imposition and start of service, owing to the prohibition against double jeopardy of the Fifth Amendment. *United States* v. *Benz*, 282 U.S. 304 (1931); *Ex parte Lange*, 85 U.S. (18 Wall.) 163 (1874). The lower courts have often rejected belated efforts to cumulate criminal sentences where the original oral pronouncement did not so provide. *Duggins* v. *United States*, 240 F.2d 479 (6th Cir. 1957); *United States* v. *Chiarella*, 214 F.2d 838 (2d Cir. 1954), *cert. denied*, 348 U.S. 902 (1954); *Rutledge* v. *United States*, 146 F.2d 199 (5th Cir. 1944).

# SUPREME COURT OF THE UNITED STATES

Nos. 180 and 184.—October Term, 1960.

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|---|---|
| Harry Joseph Payne, Petitioner,<br>180 *v.*<br>Paul J. Madigan, Warden. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit. |
| Thomas E. Young, Petitioner,<br>184 *v.*<br>United States. | On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit. |

[June 5, 1961.]

Per Curiam.

The judgments are affirmed by an equally divided Court.

Mr. Justice Frankfurter took no part in the consideration or decision of these cases.